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May 26, 2005

BY OVERNIGHT COURIER AND E-FILE

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: Bay State Gas Company, D.T.E. 05-27

Dear Ms. Cottrell:

Enclosed for filing, on behalf of Bay State Gas Company ("Bay State"), please find Bay State's responses to the following information requests of the Department of Telecommunications and Energy:

DTE-01-06 DTE-01-07 DTE-01-18

Also enclosed for filing is the Motion of Bay State Gas for a Protective Order related to the responses to DTE 01-06 and DTE 01-07.

Please do not hesitate to telephone me with any questions whatsoever.

Very truly yours,

Patricia M. French

cc: Caroline O'Brien Bulger, Esq., Hearing Officer (1 copy)
 A. John Sullivan, DTE (7 copies)
 Andreas Thanos, Ass't Director, Gas Division
 Alexander Cochis, Assistant Attorney General (4 copies)

**THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

| | | |
|-----------------------------------|---|--|
| |) | |
| Petition of Bay State Gas Company |) | |
| For Approval of Revised Tariffs |) | |
| And Other Rate Modifications |) | |
| |) | |

D.T.E. 05-27

**MOTION OF BAY STATE GAS COMPANY
FOR A PROTECTIVE ORDER**

I. INTRODUCTION

Bay State Gas Company (“Bay State”) requests that the Department of Telecommunication and Energy (“Department”) grant protection from public disclosure, pursuant to G.L. c. 25, §25D, for the federal income tax return information of Bay State contained in the Company’s response to DTE 1-6 and DTE 1-7, that have been filed today as part of the Department’s information requests in this proceeding.

In support of its request for a protective order, Bay State states as follows:

II. LEGAL STANDARD

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, §25D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

III. THE MATERIALS ARE PROPRIETARY AND CONFIDENTIAL AND WARRANT PROTECTION FROM DISCLOSURE

Bay State files federal income tax return information and Bay State has included this information as part of its responses to the Department’s information requests DTE 1-6 and DTE 1-7 in this case. The Internal Revenue Code provides for the confidentiality of federal tax return information, and, therefore, there is no general right of access by the public to a taxpayer’s

return. The Department has protected the tax returns of companies under its jurisdiction from public disclosure in past cases. As a result, the Department should protect the federal income tax return information filed today by Bay State in this proceeding.

IV. CONCLUSION

For the reasons set forth above, Bay State requests that the Department protect from public disclosure the federal income tax return information filed today with the Department.

Respectfully submitted,
BAY STATE GAS COMPANY
By its attorneys,

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and

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Dated: May 26, 2005

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RESPONSE OF BAY STATE GAS COMPANY TO THE
FIRST SET OF INFORMATION REQUESTS FROM THE D.T.E.
D. T. E. 05-27

Date: May 26, 2005

Responsible: John E. Skirtich, Consultant (Revenue Requirements)

DTE 1-6 Refer to Exh. BSG/JES-1, at 43, and Exh. BSG/JES, Sch. JES-9, at 4. Please provide the derivation of total payroll taxable for social security tax purposes of 96.75 percent. As part of this response, provide any payroll tax returns (for example, the Company's Form 941) that support the Company's calculation.

Response: The percent of payroll taxable for social security was derived using the Company's quarterly 941 information. For Bay State Gas, the total payroll taxable for social security ("OASDI") in 2004 was \$34,630,188, and the total payroll taxable for MEDI was \$35,795,141. The ratio of the two taxable amounts is 96.75%.

Table DTE-1-6 below shows the Company's 2004 quarterly taxable payroll amounts that sum to the annual payroll totals for both OASDI and MEDI.

Table DTE 1-6

| Quarter | OASDI | MEDI |
|----------------|-------------------------|-------------------------|
| First | \$ 9,476,027.98 | \$ 9,476,027.98 |
| Second | \$ 8,011,981.53 | \$ 8,023,398.94 |
| Third | \$ 8,338,268.87 | \$ 8,464,373.99 |
| Fourth | \$ 8,803,909.67 | \$ 9,831,340.36 |
| Total | \$ 34,630,188.05 | \$ 35,795,141.27 |

Please refer to Attachment DTE-1-6 for copies of the Company's 2004 quarterly payroll tax information. The quarterly OASDI amounts have each been marked with an "A," and the MEDI taxable wages have each been marked with a "B."

CONFIDENTIAL ATTACHMENT

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RESPONSE OF BAY STATE GAS COMPANY TO THE
FIRST SET OF INFORMATION REQUESTS FROM THE D.T.E.
D. T. E. 05-27

Date: May 26, 2005

Responsible: John E. Skirtich, Consultant (Revenue Requirements)

DTE 1-7 Refer to Exh. BSG/JES-1, at 46. Please explain the nature and amount of the Temporary differences from 1992 associated with the Company's SFAS No. 109 net regulatory asset that must be updated.

Response: Please see Attachment DTE-1-7, which delineates the 1992 Taxable Income of Bay State and the associated property related temporary differences.

CONFIDENTIAL ATTACHMENT

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RESPONSE OF BAY STATE GAS COMPANY TO THE
FIRST SET OF INFORMATION REQUESTS FROM THE D.T.E.
D. T. E. 05-27

Date: May 26, 2005

Responsible: John E. Skirtich, Consultant (Revenue Requirements)

DTE 1-18 Please provide a calculation showing the amount of the deficiency shown on Exh. BSG/JES-1, Workpaper JES-11, in 25, cols. 2 and 3 applicable to unreversed cumulative differences at the end of the test year.

Response: Bay State Gas is updating its "Reverse South Georgia" Methodology deficient taxes since the last rate case. The calculations in column 2 are based on column 1 updated for the new effective tax rate (See Col. 1, Line 1 and Col. 2 Lines 9 through 12). The calculations in column 3 are based on the 1992 return property difference that benefited from a federal rate at 34%, but when book exceeds tax, the amounts will be paid back at 35%.

The Company does not vintage its book depreciation, which is why the Company used Reverse South Georgia methodology. Thus, the Company cannot provide a calculation of unrecovered cumulative differences at the end of the test period.

Please see Attachment DTE-1-18, which includes a copy of Exh. BSG/JES-1, Workpaper JES-11 and the revised Federal tax code procedure, Rev. Proc. 88-12.

Witness: Skirtich
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Exh. BSG/JES-1
Workpaper JES - 11
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Bay State Gas Company
Amortization and Adjustment to D. P. U. 92-111 South Georgia Calculation
As of December 31, 2004

| Line No. | Original Calculation (1) \$ | Update for Rate Change (2) \$ | Update for 1992 Difference (3) \$ | Total |
|--|--------------------------------------|--|--|-----------|
| 1 Cumulative Differences | 116,419,468 | | | |
| 2 Deferred Taxes Required at 38.29 | 44,577,014 | | | |
| 3 Deferred Taxes Recorded | 40,191,774 | | | |
| 4 Deficiency at October 31, 1992 | 4,385,240 | | | |
| 5 Amortization | | | | |
| 6 11/1/1992 | (14,501) | | | |
| 7 12/31/1992 | (14,501) | | | |
| 8 Adjustment for 1% Federal Increase | | | | |
| 9 Cumulative Differences | | 116,419,468 | 8,459,636 | |
| 10 Deferred Taxes Required at 39.225 | | 45,665,536 | 3,318,292 | |
| 11 Deferred Taxes Required at 38.29 | | 44,577,014 | 3,239,195 | |
| 12 Additional Requirement | | 1,088,522 | 79,097 | |
| 13 1993 | (174,017) | | | |
| 14 1994 | (174,017) | | | |
| 15 1995 | (174,017) | | | |
| 16 1996 | (174,017) | | | |
| 17 1997 | (174,017) | | | |
| 18 1998 | (174,017) | | | |
| 19 1999 | (174,017) | | | |
| 20 2000 | (174,017) | | | |
| 21 2001 | (174,017) | | | |
| 22 2002 | (174,017) | | | |
| 23 2003 | (174,017) | | | |
| 24 2001 | (174,017) | | | |
| 25 Deficiency at December 31, 2004 | 2,268,034 | 1,088,522 | 79,097 | 3,435,653 |
| 26 Gross Up at 39.225/60.775 | 1,463,820 | 702,547 | 51,050 | 2,217,417 |
| 27 Total Regulatory Asset Per Books | 3,731,854 | 1,791,069 | 130,147 | 5,653,070 |
| 28 No. of Year Remaining on Amortization | 13.0334 | 13.0334 | 13.0334 | 13.0334 |
| 29 Collections per Year | 174,017 | 83,518 | 6,069 | 263,604 |
| 30 Recovery Before Gross Up | 2,268,033 | 1,088,524 | 79,100 | 3,435,656 |
| 31 Deferred ITC at December 31, 2004 | | | | 1,865,547 |
| 32 Gross Up at 39.225/60.775 | | | | 1,204,049 |
| 33 Total Regulatory Liability | | | | 1,204,049 |

REV-PROC, 88FED ¶6366, Accelerated cost recovery system: Public utilities: Excess tax reserves.—, Revenue Procedure 88-12, 1988-1 CB 637, (Jan. 28, 1988)

Revenue Procedure 88-12, 1988-1 CB 637, January 28, 1988.

[Code Sec. 168]

Accelerated cost recovery system: Public utilities: Excess tax reserves.—The Internal Revenue Service provides a method for reducing the "excess tax reserve" for certain public utilities. The method satisfies the requirements of section 203(e) of the Tax Reform Act of 1986 if used by taxpayers that are unable to utilize the average rate assumption method because they have been required by a regulatory agency to compute depreciation on public utility property on the basis of an average life or composite rate method, as opposed to a method involving the use of vintage accounts. BACK REFERENCE: 88FED ¶1800.043.

SECTION 1. PURPOSE

This revenue procedure provides a method for reducing the "excess tax reserve" for certain public utility taxpayers. In general, the method satisfies the requirements of section 203(e) of the Tax Reform Act of 1986 (the Act), 1986-3 (Vol. 1) C.B. 63, if used by taxpayers that are unable to utilize the average rate assumption method because they have been required by a regulatory agency to compute depreciation on public utility property on the basis of an average life or composite rate method, as opposed to a method involving the use of vintage accounts.

SEC. 2. BACKGROUND

.01 Under a normalization method of accounting, the amount of tax expense that a taxpayer reports for ratemaking purposes includes a deferred tax amount to reflect the fact that the taxpayer is using an accelerated method of depreciation for federal income tax purposes. For taxable years beginning on or after July 1, 1987, section 601 of the Act, 1986-3 (Vol. 1) C.B. 166, reduces from 46 percent to 34 percent the maximum federal income tax applicable to corporations. Section 203(e) of the Act provides rules for reducing the excess tax resulting both from that reduction and from the smaller reduction in rates for tax years starting before and ending after (straddling) July 1, 1987.

.02 Section 203(e) of the Act provides that a normalization method of accounting shall not be treated as being used with respect to any public utility property, for purposes of section 167 or 168 of the Internal Revenue Code, if the taxpayer, in computing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, reduces its excess tax reserve more rapidly or to a greater extent than such reserve would be reduced under the average rate assumption method. Section 203(e)(2)(A) of the Act defines the term "excess tax reserve" as the excess of (i) the reserve for deferred taxes, described in section 167(f)(3)(G)(ii) of the Code (or former section 168(e)(3)(B)(ii) as in effect on the day before the enactment of the Act), over (ii) the amount that would be the balance in the reserve if the amount of the reserve were determined by assuming that the corporate tax rates provided by the Act were in effect for all prior periods. Section 203(e) also applies with respect to the excess tax reserve that occurs from the normalization requirement that taxpayers provide for deferred taxes at a rate in excess of 34 percent for any tax year (for example, a calendar year) that straddles July 1, 1987.

.03 The legislative history of the Act, however, indicates that section 203(e) of the Act does not apply to any amount of excess tax reserve generated from reductions in corporate tax rates that occurred before the enactment of the Act. For example, section 203(e) does not apply to any excess tax reserve resulting from the reduction in the maximum corporate tax rate from 48 percent to 46 percent under the Revenue Act of 1978, section 301, 1978-3 (Vol. 1) C.B. 54. See S. Rep. No. 313, 99th Cong., 2d Sess. 98 (1986), 1986-3 (Vol. 3) C.B. 98 (Senate Report); H.R. Rep. No. 426, 99th Cong., 1st Sess. 149 (1985), 1986-3 (Vol. 2) C.B. 149 (House Report). The provisions of prior law apply to the treatment of any excess tax reserve occurring from such previous rate reductions. Of course, a taxpayer may use the average rate assumption method with respect to any excess tax reserve, including a reserve to which section 203(e) does not apply, without violating the normalization rules.

Moreover, the provisions of section 203(e) of the Act apply only with respect to the excess tax reserve resulting from depreciation occurring in years beginning before July 1, 1987, with respect to assets placed in service before January 1, 1987. See Senate Report at 98; see also House Report at 149.

Finally, the provisions of section 203(e) apply only with respect to the excess tax reserve resulting from depreciation "timing" differences that were required to be normalized under section 167 or 168 of the Code. Thus, for example, section 203(e) of the Act does not apply to the excess tax reserve resulting from the normalization of other book/tax timing differences, as described in section 1.167(l)-1(a)(1) of the Income Tax Regulations (for example, state income taxes). Cf. Rev. Rul. 87-139, 1987-52 I.R.B. 13, 14, which concludes that section 203(e) applies to the "voluntary" normalization method adopted by a taxpayer as described in that ruling.

.04 Section 203(e)(2)(B) of the Act defines the average rate assumption method as the method under which the excess tax reserve is reduced over the remaining lives of the property (as used in a public utility's regulated books of account) that gave rise to the reserve for deferred taxes. Under this method, the amount of the annual adjustment to the reserve for deferred taxes is the product of (i) the ratio of the aggregate deferred taxes for the property to the aggregate timing differences for the property (the applicable average rate), and (ii) the amount of the timing differences that reverse during the year. The calculation is made as of the beginning of the year in which timing differences in the vintage account begin to reverse, that is, the first year in which the tax depreciation taken with respect to the vintage account is less than the amount of depreciation reflected in the regulated books of account computed on the tax basis. Thus, under the average rate assumption method, excess tax reserves pertaining to a particular vintage or vintage account are not flowed-through to ratepayers until such time as the timing differences in the particular vintage account reverse. Moreover, it is a violation of section 203(e) of the Act for taxpayers to adopt any accounting treatment that, directly or indirectly, circumvents the rule set forth in the previous sentence.

In addition, section 203(e) of the Act does not modify the normalization requirements of section 167(1) or section 168(i) of the Code. For example, a violation of the normalization rules occurs if a taxpayer provides for deferred taxes with respect to a particular vintage account at a tax rate less than the statutory rate applicable to the taxpayer for the current year in question.

.05 Some taxpayers have been required by regulatory agencies to depreciate property for regulatory purposes using a weighted average life or composite rate. A method of depreciation that uses a weighted average life or composite rate focuses on the entire plant and does not account for property by vintage accounts. Consequently, taxpayers that use this method may not have adequate data to apply the average rate assumption method.

SEC. 3 SCOPE

A taxpayer is described in this section 3 if, as of the first day of the taxable year that includes July 1, 1987, (i) the taxpayer was required by a regulatory agency to compute depreciation for public utility property on the basis of an average life or composite rate method, and (ii) the taxpayer's books and underlying records did not contain the vintage account data necessary to apply the average rate assumption method. If a taxpayer is subject to the jurisdiction of more than one regulatory body, the determination of the adequacy of the vintage accounting for each asset or group of assets shall be determined on a jurisdiction-by-jurisdiction basis.

SEC. 4. DEFINITION OF REVERSE SOUTH GEORGIA METHOD

.01 In general, a taxpayer uses a method described in this section 4 if it (a) computes the excess tax reserve on all public utility property included in the plant account on the basis of the weighted average life or composite rate used to compute depreciation for regulatory purposes, and (b) reduces the excess tax reserve ratably over the remaining regulatory life of the property. This method is sometimes referred to as the "Reverse South Georgia Method."

.02 *Special rule if a taxable year straddles July 1, 1987.* A taxpayer uses the method described in section 4 if the excess tax reserve is computed as of the first day of the year by subtracting from the reserve for deferred taxes (described in section 167(1) or 168(i)(9) of the Code) the amount that would be the balance of such reserve if the amount were determined by assuming that the weighted average tax rate for the year were in effect for all prior periods. (However, any reserve amount to which section 203(e) of the Act does not apply, as discussed in section 2.03 of this revenue procedure, is not required to be included in the excess tax reserve that is subject to

REV-PROC, 88FED ¶6366. Accelerated cost recovery system: Public utilities: Excess tax Page 3 of 3

ratable reduction under the Reverse South Georgia Method. Instead, the requirements of prior law apply to any such reserve amount). For a taxable year that straddles July 1, 1987, any reasonable method of calculating the weighted average tax rate shall be allowed under section 203(e). For example, under one acceptable method, the weighted average tax rate may be computed by using the marginal tax rate (46 percent) for the portion of the taxable year prior to July 1, 1987, and the marginal tax rate (34 percent) for the portion of the taxable year after July 1, 1987, weighted by the number of days in each period.

If the taxpayer has a taxable year that straddles July 1, 1987, then the taxpayer uses the method described by this section 4 for its succeeding taxable year if the excess tax reserve as of the first day of the succeeding taxable year is redetermined by subtracting from the reserve for deferred taxes (described in section 167(1) or 168(i)(9) of the Code) the amount that would be the balance of such reserve if the amount were determined by assuming that a 34 percent tax rate had been in effect for all prior periods. Redeterminations of the excess tax reserve are not made for subsequent years. Adjustments to the unamortized excess tax reserve may only be made to reflect asset retirements.

SEC. 5. APPLICATION

.01 If a taxpayer that is described in section 3 of this revenue procedure with respect to a jurisdiction uses the Reverse South Georgia Method described in section 4 for public utility property that is subject to the regulatory authority of that jurisdiction, then with respect to that property for that taxable year the taxpayer is deemed to satisfy the normalization requirements of section 203(e) of the Act.

.02 The use of the method described in section 4 by a taxpayer whose books and underlying records contain vintage year data for public utility property constitutes a violation of the requirements contained in section 203(e) of the Act if that method reduces the excess tax reserve more rapidly than the reserve would be reduced under the average rate assumption method.

SEC. 6. EFFECTIVE DATE

This revenue procedure is effective for any taxable year subject to section 203(e) of the Act.

DRAFTING INFORMATION

The principal author of this revenue procedure is Michael J. Hahn of the Corporation Tax Division. For further information regarding this revenue procedure, contact Noel J. Sheehan on (202) 566-3928 (not a toll-free call).

NON: RCB01 REVPROC88-12 <http://tax.cchgroup.com/network&JA=LK&NoSplash=Y&&LKO=GUID%3Ae18c0de9-f049-3c49-9c5e-6f3c05ed8d0f&KT=L&NoLFN=TRUE&RCB01#17310> [RULINGS RULINK CBLINK]